

Date of Decision : December 19, 2007.

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Petitioner is widowed daughter-in-law of respondent no.3. The dispute relates to inheritance of disputed land from petitioner's husband

Yadwinder Singh. The petitioner claims a registered Will in her favour. Petitioner filed civil suit Annexure P-3 against respondent no.3 and others, whereas respondent no.3 and another filed civil suit against the petitioner (Annexure P-4). In that suit, ex-parte order dated 19.08.2005 (Annexure P-5) was passed by the civil court directing the parties to maintain status quo over the disputed property. The said order of status quo was confirmed vide order dated 13.03.2006 (Annexure P-6). Thereafter, the police filed the impugned *kalandra* dated 18.07.2006 (Annexure P-7) for initiating proceedings under Section 145 of the Code. Vide order dated 18.07.2006 (Annexure P-8), both the parties i.e. petitioner and respondent no.3 were directed to appear before the Sub Divisional Magistrate on 25.07.2006, along with their documentary evidence. Thereafter, learned Sub Divisional Magistrate, vide detailed order dated 03.08.2006 (Annexure P-10) ordered to initiate proceedings under Section 145 of the Code and directed the parties to appear on 24.08.2006 to adduce their evidence under Section 145 (4) of the Code. Simultaneously, Tehsildar Bagha Purana was appointed as Receiver to take the disputed land into his possession and to make appropriate arrangement for the same. Feeling aggrieved, the petitioner has filed the instant petition.

Learned counsel for the petitioner vehemently contended that since civil court is seized of the matter, proceedings under Section 145 of the Code should not have been initiated. It was also pointed out that even in the impugned *kalandra*, it has been observed that petitioner had sown paddy crop in the disputed land meaning thereby that the petitioner is in possession of the disputed land. Learned counsel for the petitioner relying on judgments in the cases of *Mange Ram vs. Sub Divisional Magistrate* – reported as *1985 (2) R.C.R. (Criminal) 208*, *Gian Chand and others vs. State of Haryana and others* – reported as *2005 (3) R.C.R. (Criminal) 958*, *Ranbir Singh vs. Dalbir Singh* – reported as *2006 (2) R.C.R. (Criminal) 275*, *Mahar Jahan and others vs. State of Delhi and others* – reported as *2006 (2) R.C.R. (Criminal) 80* and *Ram Sumer Puri Mahant*

vs. State of U.P. – reported as **1985 (1) R.C.R. (Criminal) 278** contended that the proceedings under Sections 145 and 146 of the Code are not maintainable as civil court is seized of the matter. It was also contended on the strength of these decisions that if still there was apprehension of breach of peace, proceedings could be initiated under Sections 107 and 151 of the Code or civil court could be approached for modification of the interim order of status quo. Learned counsel for the petitioner also cited two judgments in the cases of *Sarwan Singh vs. Sub Divisional Magistrate, Ferozepur* – reported as **1997 (3) R.C.R. (Criminal) 279** and *Shri Raghbir Dass Mahant Chela Madan Mohan Dass vs. Sub Divisional Magistrate, Jagadhri and others* – reported as **2003 (1) R.C.R. (Criminal) 829**, wherein it was observed that even if there is order of status quo by the civil court, Magistrate cannot initiate proceedings under Section 145 and 146 of the Code and for apprehension of breach of peace, proceedings under Sections 107 and 151 of the Code could be initiated. Reliance on behalf of the petitioner has also been placed on a judgment in the case of *Malkiat Singh vs. State of Punjab and another* - reported as **1997 (2) R.C.R. (Criminal) 303**, wherein it was observed that according to the police report, petitioner was in possession of the disputed property and therefore, initiation of proceedings under Section 145 of the Code was not justified.

On the other hand, learned counsel for respondent no.3 contended that since there was only status quo order of the civil court, and there was apprehension of breach of peace, the Magistrate was competent to initiate proceedings under Sections 145 and 146 of the Code. Reliance in support of this contention has been placed on four judgments in the cases of *Jaswant Singh vs. State of Punjab* – reported as **1997 (3) R.C.R. (Criminal) 705**, *Mukhtiar Singh vs. State of Punjab* - reported as **1997 (3) R.C.R. (Criminal) 14**, *Pushpinder Kaur vs. Sub Divisional Magistrate, Rajpura* - reported as **1997 (3) R.C.R. (Criminal) 315** and *Roshni Devi vs. State of Haryana* - reported as **1999 (1) R.C.R. (Criminal) 163**.

I have carefully considered the rival contentions and perused the precedents cited by both sides. The weight of the precedents, however, is in favour of the proposition that the Magistrate should not initiate proceedings under Section 145 and 146 of the Code when civil court is already seized of the matter. For apprehension of breach of peace, proceedings could have been initiated against Section 107 and 151 of the Code or even the civil court could be approached by either side for modification of temporary order of status quo.

Learned counsel for respondent no.3 also relied on two judgments in the cases of *Sahib Singh vs. State of Punjab* - reported as *2000 (2) R.C.R. (Criminal) 135* and *Mahant Ram Saran Dass vs. Sub Divisional Magistrate* - reported as *2000 (2) R.C.R. (Criminal) 82*. However, these decisions are distinguishable on facts.

In view of the aforesaid, since civil court is already seized of the matter, continuation of proceedings under Section 145 and 146 of the Code would be an abuse of the process of the Court. Accordingly, the instant petition is allowed and the impugned *kalandra* (Annexure P-7) under Section 145 of the Code and impugned order (Annexure P-10) appointing Tehsildar as Receiver under Section 146 of the Code are quashed along with all consequential proceedings. Learned Sub Divisional Magistrate, Bagha Purana is directed to restore status quo ante as it existed before passing of the impugned order dated 03.08.2006 (Annexure P-10).

The petition stands disposed of accordingly.

December 19, 2007

monika

**(L.N.MITTAL)
JUDGE**